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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5004-14T2

ERIC WEISS,

Plaintiff-Appellant,

v.

THE RICHTER ORGANIZATION,
LLC, GERALD RICHTER, and
DOUGLAS RICHTER,

Defendants-Respondents.

Argued February 27, 2018 - Decided May 23, 2018

Before Judges Reisner, Gilson, and Mayer.

On appeal from Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
C-000185-06.

Eric Weiss, appellant pro se.

James A. Paone, II, and Matthew K. Blaine
argued the cause for respondents The Richter
Organization, LLC, Gerald Richter, and Douglas
Richter (Davison, Eastman & Muñoz, PA,
attorneys; James A. Paone, II, and Matthew K.
Blaine, on the brief).

James E. Tonrey, Jr., argued the cause for pro
se respondent Wilentz, Goldman & Spitzer, PA.

PER CURIAM

This appeal arises out of plaintiff's claims for real estate sales commissions. Plaintiff, Eric Weiss, appeals from six court orders: (1) an October 3, 2013 order allowing his former attorneys, Wilentz, Goldman & Spitzer, P.A. (the Wilentz firm), to withdraw from representing him; (2) a June 6, 2014 order denying his application for sanctions against defendants and their former counsel; (3) a November 21, 2014 order dismissing with prejudice plaintiff's claims against defendants Gerald Richter and the Richter Organization, LLP; (4) a May 8, 2015 order granting summary judgment to defendant Douglas Richter; (5) a June 22, 2015 order denying plaintiff's motion for sanctions; and (6) a June 22, 2015 order releasing funds held in escrow. We affirm.

I.

The underlying facts are not particularly complex. The procedural history, however, is convoluted because there were numerous discovery disputes, defendants filed for bankruptcy protection, and plaintiff had difficulty getting along with his own attorneys, which resulted in a series of motions by the Wilentz firm to withdraw as plaintiff's counsel.

Plaintiff is a licensed real estate salesperson. He alleges that in 2000, he and his then co-worker, Gerald Richter, entered into an oral agreement to establish a brokerage firm. At the

time, plaintiff and Gerald Richter were working as real estate brokers at another firm. In 2001, they left that firm and established the Richter Organization. Plaintiff contends that he was entitled to twenty-five percent of the profits of the Richter Organization. Plaintiff also alleges that he entered into a separate oral agreement with Douglas Richter, Gerald's son, who was also a salesperson at the Richter Organization. Under that agreement, plaintiff claims that he was entitled to fifty percent of the commissions for certain real estate sales.

Plaintiff was terminated from the Richter Organization in March 2006. In June 2006, he filed a complaint in the Chancery Division against the Richter Organization, Gerald Richter, and Douglas Richter. Thereafter, he amended his complaint. He asserted various causes of action based on alleged contracts and torts. In terms of damages, plaintiff sought compensation for his claimed ownership interest in the Richter Organization, commissions, and other damages.

At the beginning of the case, plaintiff sought an order compelling payment of his claimed commissions. That application was denied, but the Richter Organization did deposit funds into an escrow account to cover the commissions to which plaintiff claimed he was entitled.

The parties then engaged in discovery and disputes arose. In November 2009, Gerald Richter and the Richter Organization filed separately for bankruptcy protection. Plaintiff was listed as an unsecured creditor and this state court litigation was automatically stayed. Plaintiff then filed adversarial proceedings in the bankruptcy court seeking to pursue the same claims that he asserted in the Chancery Division. In 2011 and 2012, the bankruptcy court issued orders lifting the stays and allowing plaintiff to pursue his claims against defendants in state court.

Accordingly, the parties resumed discovery in the Chancery Division and more disputes arose.¹ In 2012, plaintiff moved for sanctions against defendants arguing, among other things, that defendants had failed to produce a client list and sales information that had previously been ordered to be turned over. On November 8, 2012, the trial court entered an order (1) denying without prejudice plaintiff's request to suppress defendants' pleadings; (2) directing defendants to comply with their discovery obligations; (3) awarding plaintiff certain attorney's fees,

¹ When the action was stayed by the bankruptcy filing, the Chancery Court administratively dismissed the state court action without prejudice. When the stay was lifted, the court reinstated the action.

conditioned on plaintiff filing an appropriate analysis of the legal fees incurred; and (4) directing the Richter Organization to maintain an escrow to cover the commissions allegedly due to plaintiff.²

Thereafter, in a February 12, 2013 order, the trial court granted plaintiff additional fees, but iterated that any award of attorney's fees to plaintiff was conditioned on plaintiff submitting a detailed analysis of the legal fees incurred, supported by billing records. The court also made it clear that any fee award would be subject to the court's analysis of the reasonableness of the fees requested. Finally, the court set time frames for the submission of those analyses and responses. Those deadlines, however, were extended due to motions filed by plaintiff's attorneys to withdraw as his counsel.

While the parties were disputing discovery issues, separate disputes arose between plaintiff and his counsel, the Wilentz firm. The Wilentz firm filed a motion to be relieved as plaintiff's counsel. That motion was denied without prejudice in a November 8, 2012 order. The Wilentz firm then filed a motion for partial reconsideration, with four supporting certifications

² At the time that order was entered, defendants had depleted the escrow. Thereafter, however, monies were placed back into the escrow.

of counsel. Eventually, that motion was assigned to a separate judge. On October 3, 2013, the court entered an order allowing the Wilentz firm to withdraw as counsel for plaintiff. The court issued a written opinion explaining the reasons for that order. The court also directed plaintiff to retain new counsel within thirty days. Plaintiff, however, never retained new counsel and, thereafter, he represented himself.³

In May 2014, plaintiff filed a motion seeking to suppress defendants' pleadings and award him counsel fees. Plaintiff also sought partial summary judgment. By that time, the judge who had issued the discovery-related orders in 2012 and 2013 had retired. Thus, a new judge heard oral argument on June 6, 2014. The court denied plaintiff's motion in its entirety and explained the reasons on the record. The court found that plaintiff had made no showing warranting the suppression of defendants' pleadings as a sanction. The court also found that plaintiff had not established a basis for partial summary judgment. Finally, the court denied plaintiff's request for attorney's fees because he failed to comply with the procedures set forth in the February 12, 2013 order.

³ At oral argument on June 12, 2015, the trial court permitted Brian F. Curley, Esq., to argue against defendants' motion to release funds held in escrow. Mr. Curley, however, was never listed as attorney of record, and never filed a substitution of attorney as directed by the court.

In the meantime, while plaintiff pursued his claims in the Chancery Division, the bankruptcy court proceedings continued and ultimately were resolved. In April 2014, the bankruptcy court entered a final decree confirming that the bankruptcy of the Richter Organization had been fully administered and the trustees were discharged. Thereafter, in July 2014, the bankruptcy court dismissed plaintiff's adversarial proceedings against Gerald Richter for lack of prosecution. Gerald Richter was then granted a decree discharging him from bankruptcy.

In September 2014, the Richter Organization and Gerald Richter moved to dismiss with prejudice the claims against them based on the resolution of the bankruptcy proceedings. Plaintiff was granted an adjournment to try to obtain counsel, but a subsequent adjournment request made on the eve of the return date was denied. On November 21, 2014, the trial court dismissed with prejudice the claims against the Richter Organization and Gerald Richter. The order stated that the reasons for that order were placed on the record on November 21, 2014. Plaintiff, however, did not provide us with the transcript of the November 21, 2014 proceedings.

Plaintiff did, however, file a motion in the bankruptcy court to reopen the bankruptcy proceedings and pursue his adversarial claim against Gerald Richter. That motion was denied. Plaintiff

appealed that denial, but the United States District Court dismissed plaintiff's appeal.

Thereafter, Douglas Richter moved for summary judgment. After hearing oral argument on May 8, 2015, the trial court entered an order granting summary judgment to Douglas Richter and explained its reasons for that ruling on the record. The court first focused on plaintiff's main claim, which involved claims for unpaid commissions. The court held that those claims were precluded under N.J.S.A. 45:15-3, -16, and -17(m). Specifically, the court found that because the claims depended on Douglas Richter's alleged failure to abide by a verbal agreement to share commissions, those claims could only be brought against the broker of record, Gerald Richter. The court then held that plaintiff's other claims against Douglas Richter were barred under the economic loss doctrine or because they were inadequately pled or without a legal basis.

While Douglas Richter's motion for summary judgment was pending, plaintiff filed another motion seeking sanctions against defendants. Specifically, plaintiff, relying on the court's orders entered on November 8, 2012 and February 12, 2013, sought an award of attorney's fees. The trial court heard oral arguments on that application on June 12, 2015. At that time, the court also considered defendants' application to release the escrow funds. In an oral decision on June 19, 2015, the court explained

its reasons for denying plaintiff's request for sanctions and attorney's fees.

The court found that plaintiff had not complied with the requirements of the orders entered on November 8, 2012, and February 12, 2013. The court also found that plaintiff could not show any prejudice because the case had proceeded after the alleged discovery violations and the claims against defendants had been dismissed on grounds unrelated to the alleged discovery violations. The court also pointed out that the motion was, in essence, a motion for reconsideration since the court had previously denied the same application in an order entered on June 6, 2014. The court then found that plaintiff had showed no basis for reconsideration. That ruling was memorialized in an order dated June 22, 2015.

In a separate June 22, 2015 order, the court also granted Gerald Richter's request to release the escrow funds to him. Again, the court explained its reasons for that ruling on the record on June 19, 2015. The court found that the escrow had been set up in the event that plaintiff prevailed on his commission claims. As all claims against defendants had been dismissed by June 2015, the court reasoned that there was no longer a need for the escrow funds and that the funds properly belonged to Gerald Richter. The court did stay the release of the escrow funds for

seventeen days to allow plaintiff to seek a further stay from us. Eventually, we directed plaintiff to submit a bond in order to maintain the stay, but when he failed to submit that bond, the escrow funds were released to Gerald Richter.

II.

Plaintiff appeals from six orders and makes six arguments. He contends that the trial court abused its discretion or erred in: (1) not striking defendants' pleadings as a sanction for failing to produce discovery; (2) dismissing the claims against the Richter Organization and Gerald Richter; (3) granting summary judgment to Douglas Richter; (4) not awarding plaintiff attorney's fees for defendants' failure to produce discovery; (5) releasing the escrow funds to Gerald Richter; and (6) permitting the Wilentz firm to withdraw from representing him. Plaintiff also contends that if the case is remanded, it should be assigned to a different trial judge. As part of his arguments, plaintiff also raises numerous contentions concerning alleged procedural errors that arose during the course of this protracted litigation.

We find no merit in any of plaintiff's arguments and affirm all six orders. We will analyze plaintiff's arguments concerning the sanctions and attorney's fees in one discussion and then address the remainder of his arguments.

A. Plaintiff's Contentions That Defendants Should Have Been Sanctioned and He Should Have Been Awarded Attorney's Fees

Plaintiff argues that the trial court should have stricken defendants' pleadings as a sanction for failing to produce discovery, and the court should have awarded him attorney's fees that he incurred in compelling discovery. Those arguments are premised on orders entered on November 8, 2012 and February 12, 2013. In orders entered on June 6, 2014 and June 22, 2015, the court denied plaintiff's requests to sanction defendants and to award attorney's fees.

The sanction of striking a pleading for discovery violations is a "drastic" remedy that "should be imposed only sparingly." Georgis v. Scarpa, 226 N.J. Super. 244, 250 (App. Div. 1988). A court should impose that sanction only when a lesser sanction would not suffice either to punish the non-complying party or to alleviate the prejudice caused by the non-compliance. Abtrax Pharms. v. Elkins-Sinn, 139 N.J. 499, 514 (1995). Attorney's fees can be awarded as a sanction if a party fails to comply with discovery obligations. Ibid.; R. 4:23-2(b).

We review decisions to impose discovery sanctions for an abuse of discretion. Innes v. Carrascosa, 391 N.J. Super 452, 495-96 (App. Div. 2007). Similarly, we review decisions to award attorney's fees as a discovery sanction under an abuse of

discretion standard. Shore Orthopaedic Grp. v. Equitable Life Assurance Soc'y of U.S., 397 N.J. Super. 614, 629-30 (App. Div. 2008).

A review of the record here establishes that initially defendants did not comply with their discovery obligations and disregarded several court orders directing that discovery be produced. Those disputes were presented to the court and were addressed in orders entered on November 8, 2012 and February 12, 2013. In both those orders, the court denied, without prejudice, plaintiff's motion to strike defendants' pleadings. The court went on, however, to warn that if defendants continued to fail to comply with their discovery obligations, plaintiff could renew the motion and the court would consider imposing that sanction.

In both orders, the court also found that plaintiff was entitled to attorney's fees in connection with his efforts to obtain discovery. The court, however, conditioned the award of any fees on plaintiff filing an appropriate analysis to justify the fees and the amount of fees sought. No such analysis was ever filed.

In 2014, and again in 2015, plaintiff filed motions to sanction defendants by striking their pleadings. Plaintiff also renewed his requests for attorney's fees. By that time, the judge

who had issued the orders in November 2012 and February 2013, was retired. Thus, the motions were heard by a new judge.

In orders entered on June 6, 2014 and June 22, 2015, the court found that there was no basis to strike defendants' pleadings. The court noted that plaintiff contended that defendants had not produced the required discovery, but also noted that defendants had certified that they had produced the discovery. Ultimately, the court did not find that defendants had continued to violate their discovery obligations after February 2013. Accordingly, the court found that there was no basis to impose the drastic remedy of striking a party's pleadings and, therefore, denied plaintiff's request for that sanction. The court also found that plaintiff had failed to submit the analysis required by the November 8, 2012 and February 12, 2013 orders, to support and justify an award of attorney's fees.

We discern no abuse of discretion in the trial court's decision not to sanction defendants by striking their pleadings. We also discern no abuse of discretion in the court deciding not to award plaintiff a specific amount of attorney's fees. The record does not reflect favorably on any party. Initially, defendants failed to comply with their discovery obligation and court orders directing their compliance. Plaintiff, however, never established a basis for the harsh sanction of striking

defendants' pleadings. Plaintiff also failed to provide the trial court with the analysis that would have allowed the court to determine what fees plaintiff actually incurred in seeking and compelling the discovery.

On appeal, plaintiff argues that the trial court abused its discretion because the November 8, 2012 and February 12, 2013 orders decided the issues and were law of the case. Plaintiff is misreading those orders. As pointed out, neither order imposed the sanction of striking defendants' pleadings. Instead, they denied that relief without prejudice. When plaintiff renewed his motion, the court found that there was no showing justifying such a harsh sanction. While the orders issued in November 2012 and February 2013 did state that plaintiff would be awarded attorney's fees, the orders also conditioned that award on plaintiff submitting an appropriate analysis of the legal fees incurred. When plaintiff later sought the attorney's fees, he did not provide the court with the required analysis.

B. The Dismissal of the Claims against the Richter Organization and Gerald Richter

Plaintiff next argues that the trial court erred in dismissing the claims against the Richter Organization and Gerald Richter. That dismissal was memorialized in an order entered on November 21, 2014. The order states that the reasons for the decision were

placed on the record on November 21, 2014. Plaintiff, however, failed to provide the transcript of November 21, 2014.

The rules of court require an appellant to provide the relevant portions of the record so that the appeal can be appropriately reviewed. R. 2:5-3(a). With regard to transcripts of decisions, the rule states: "if a verbatim record was made of the proceedings before the court . . . from which the appeal was taken, the appellant shall no later than the time of the filing and service of a notice of appeal, serve a request for preparation of an original and copy of the transcript" Ibid. The rules further state that a failure to properly prosecute an appeal, can be grounds for dismissal. R. 2:9-9.

When plaintiff filed his notice of appeal, he was informed that he had failed to provide the transcript of November 21, 2014. Plaintiff took the position, however, that the transcript was not necessary and, thus, he assumed the risk that when we considered his appeal on its merits, we would be unable to conduct a full review. We find that without the transcript a full and fair review cannot be conducted. Accordingly, we dismiss the portion of his appeal that seeks to challenge the November 21, 2014 order granting a dismissal to the Richter Organization and Gerald Richter.

Although we are dismissing that portion of the appeal, we note that the record does not support that plaintiff has been

prejudiced. The Richter Organization and Gerald Richter both filed for bankruptcy. Plaintiff filed adversarial proceedings seeking to pursue the claims that he asserted in the Chancery Division in the bankruptcy action. In 2011 and 2012, the bankruptcy court lifted the automatic stay, allowed plaintiff to pursue his claims in the Chancery Division, except for execution of any judgment if it was obtained, and stayed the adversarial proceedings in the bankruptcy court.

Thereafter, however, in 2014, the bankruptcy court discharged the Richter Organization from bankruptcy. The bankruptcy court also dismissed plaintiff's adversarial proceedings against Gerald Richter. On the record before us, we can only presume that the bankruptcy court effectively lifted the stay on the adversarial proceedings in the bankruptcy court, concluded that plaintiff had failed to prosecute the claims and, therefore, dismissed the adversarial claims. After the Chancery Court had dismissed the claims against the Richter Organization and Gerald Richter, plaintiff filed a motion in the bankruptcy court to reopen the adversarial bankruptcy proceeding. That motion was denied and the appeal of the order denying the motion to reopen the bankruptcy proceeding was dismissed by the United States District Court.

On this appeal, plaintiff complains that his right to be heard on the motion seeking to dismiss the claims against the

Richter Organization and Gerald Richter was denied. In that regard, he contends that he asked for adjournments to obtain counsel, but the adjournments were not granted. The record shows that his first request for an adjournment was granted. It was only the second request, made on the eve of the return date of the motion, which was denied. Moreover, at the time that plaintiff made his request for an adjournment to obtain counsel, he had been representing himself for over a year and had failed to comply with an earlier order directing him to retain counsel within thirty days.

Plaintiff also alleges that defendants have misrepresented what took place in the bankruptcy court and the effect of the discharges of the bankruptcy proceedings. In making that argument, however, plaintiff puts his own characterizations on the bankruptcy orders, which are not supported by the face of the orders themselves. Here again, we are unable to conduct a full review because we do not have all of the record from the bankruptcy action. Nevertheless, as already pointed out, the orders issued by the bankruptcy court on their face support the construction that plaintiff's claims against the Richter Organization and Gerald Richter were discharged.

C. Summary Judgment In Favor of Douglas Richter

Plaintiff next argues that the trial court erred in granting summary judgment to Douglas Richter. Specifically, he contends that (1) the motion was procedurally deficient because he was not given sufficient notice under Rule 4:46-1; (2) the court had previously denied summary judgment to Douglas Richter and there were disputed issues of material fact precluding summary judgment; and (3) the court erred in granting summary judgment based on the Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 to -29.5. We disagree and affirm.

Rule 4:46-1 requires that a motion be made returnable at least thirty days before trial except for good cause shown, that it be filed at least twenty-eight days prior to the return date, and that replies to any opposition be served no later than four days prior to the return date.

Plaintiff complains that the court heard the motion outside the appropriate time frames. The record, however, shows that plaintiff received the motion by email within the time frame and received a physical copy twenty-seven days prior to the return date. Just as significantly, the court adjourned the return date. Most critically, plaintiff has shown no prejudice from any slight deviations from the time frames. The record demonstrates that

plaintiff had a full and fair opportunity to present his arguments, which the trial court carefully considered.

Plaintiff also argues that the court had previously denied Douglas Richter's motion for summary judgment and there were disputed issues of material facts precluding summary judgment. The trial court carefully considered these arguments and found that the prior motions had been denied on other grounds and that there were no material issues of fact precluding summary judgment. Having reviewed the record, we agree with the trial court.

The trial court granted summary judgment to Douglas Richter based on certain provisions of the Real Estate Brokers and Salesmen Act. Specifically, the trial court held that N.J.S.A. 45:15-3, -16, and -17(m), precluded plaintiff from seeking real estate sales commissions from Douglas Richter, because Douglas Richter was not the licensed broker.

In reviewing a summary judgment order, we use a de novo standard of review and apply the same standard employed by the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). Accordingly, we determine whether the moving party has demonstrated that there were no genuine disputes as to any material facts and, if not, whether the moving party was entitled to judgment as a matter of law. R. 4:46; Davis, 219 N.J. at 405-

06; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

N.J.S.A. 45:15-3 defines real estate salespersons and broker-salespersons and then provides in relevant part:

No person claiming to be entitled to compensation as a . . . salesperson or broker-salesperson for the performance of any of the acts mentioned in [the Real Estate Brokers and Salesmen Act] shall bring or maintain any action in the courts of this State for the collection of compensation against any person, firm, partnership or corporation other than the licensed broker with whom the . . . salesperson or broker-salesperson was employed at the time the alleged cause of action arose

N.J.S.A. 45:15-16 states that "[n]o real estate salesperson, [or] broker-salesperson . . . shall accept a commission or valuable consideration for the performance of any of the acts herein specified, from any person except his employer, who must be a licensed real estate broker." N.J.S.A. 45:15-17(m) authorizes the Real Estate Commission to discipline a real estate salesperson for "[a]ccepting a commission or valuable consideration as a real estate broker-salesperson, [or] salesperson . . . for the performance of any of the acts specified in this act, from any person, except his employing broker, who must be a licensed broker[.]"

Here, plaintiff was making claims as a salesperson or broker-salesperson for real estate commissions. Douglas Richter was not a licensed broker for those sales; rather, he was another salesperson and the licensed broker was Gerald Richter. The critical fact was that the commissions were being paid to Gerald Richter as the licensed broker and to the extent that plaintiff had a claim for a share of those commissions, that claim needed to be asserted against Gerald Richter. As already pointed out, plaintiff's claims against Gerald Richter were discharged in the bankruptcy proceeding, and were thereafter dismissed with prejudice in the Chancery court. Accordingly, given the facts of this case, summary judgment was properly granted to Douglas Richter and we affirm the May 8, 2015 order.⁴

This is not a situation where one broker sued another for a share of a commission based on an agreement between the brokers. Instead, the material facts establish that plaintiff and Douglas Richter were salesmen or brokers working for the Richter

⁴ Plaintiff relies on a May 15, 2015 letter from the New Jersey Real Estate Commission to contend that he has a right to pursue his contractual claim against Douglas Richter. That letter was received after the trial court's May 2015 summary judgment order was entered and, therefore, we do not consider it because it was not part of the record. R. 2:5-4; Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 52 (2004). Moreover, even if we were to consider the letter, the Commission expressly stated that it was not giving any guidance on the issues raised by plaintiff.

Organization and that Gerald Richter was the licensed real estate broker. Consequently, all commissions came through the Richter Organization and Gerald Richter. See DeBenedictis v. Gerechoff, 134 N.J. Super. 238, 242-45 (App. Div. 1975) (discussing when one broker can sue another broker for a share of commissions).

D. The Release of the Escrow Funds

Plaintiff next argues that the court abused its discretion by releasing the funds held in escrow. The short answer to plaintiff's contention is that the escrow funds would only be available to plaintiff if he prevailed on his claims. Since we have affirmed the dismissals with prejudice and summary judgment in favor of defendants, plaintiff has no legitimate claim to the funds held in escrow and they were properly released to Gerald Richter.

E. The Withdrawal of the Wilentz Firm

The decision to grant a motion to be relieved as counsel "is generally in the discretion of the [trial] court and depends on such considerations as proximity of the trial date and possibility for the client to obtain other representation." In re Simon, 206 N.J. 306, 320-21 n.8 (2011) (quoting Jacobs v. Pendel, 98 N.J. Super. 252, 255 (App. Div. 1967)). We review a trial court's determination on whether to allow the withdrawal of counsel under

an abuse of discretion standard. See Jacobs, 98 N.J. Super. at 255.

Unless the client consents, counsel must give notice to the client and obtain leave of court to withdraw from a representation. R. 1:11-2(a)(2); see also RPC 1.16(c) ("A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.") One recognized basis for permitting counsel to withdraw is if "the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement[.]" RPC 1.16(b)(4).

The Wilentz firm filed several motions to withdraw as counsel for plaintiff. Initially, the motion was denied without prejudice. Based on new developments, the Wilentz firm moved again and that motion was heard by a separate judge who had not been involved in handling the underlying litigation. The judge considered fairly extensive materials submitted by plaintiff and the Wilentz firm, including numerous certifications from attorneys at the Wilentz firm. The judge also sealed those materials because they related to attorney-client communications. The judge then heard oral argument and granted the motion in an order and written opinion, both of which were dated October 3, 2013.

The judge found that there had been an irretrievable breakdown in the attorney-client relationship between plaintiff and the

Wilentz firm. That finding was well-supported by the record, which included demonstrated friction between plaintiff and the Wilentz firm, examples of plaintiff taking action independent of the advice of the Wilentz firm, and the Wilentz firm's legitimate belief that it could not continue to represent plaintiff because of ongoing conflicts and a strong difference with plaintiff concerning the strategy for the litigation.

The judge also considered the potential hardship to plaintiff of having to replace his counsel at that point in the litigation. In that regard, the judge found that the Wilentz firm could withdraw without adverse effect on plaintiff's interest because no trial date had been set and plaintiff had a reasonable period of time to find new counsel. Those findings are also well-supported by the record.

Finally, the judge considered, but rejected, plaintiff's argument that the prior ruling on the motion to withdraw was law of the case. Specifically, the judge found that there were new developments in the deterioration of the relationship between plaintiff and the Wilentz firm. Moreover, the court correctly noted that the prior ruling had been without prejudice and was not law of the case. See Pressler & Verniero, Current N.J. Court Rules, cmt. 4 to R. 1:36-3 ("Obviously, the 'law of the case' doctrine is not implicated at all by a judge's reconsideration of

a prior interlocutory order. This principle remains true even if a different judge is reconsidering the prior interlocutory order.") (citations omitted).

Having reviewed the law and the record, which included sealed portions of the record related to the Wilentz firm's motions to withdraw as counsel, we find no abuse of discretion in the trial court's decision to allow the Wilentz firm to withdraw from representing plaintiff. Accordingly, we affirm the October 3, 2013 order allowing that withdrawal.

In summary, we affirm each of the six orders from which plaintiff appealed. To the extent that we have not addressed certain of plaintiff's arguments, we do so because we concluded that they are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION